IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9015 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANUBHAI L PRAJAPATHI - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MS KSHMA V SHETH for Petitioner(s) : 1,
DELETED for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR PARESH UPADHYAY for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/04/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has

prayed for an appropriate writ, order or direction quashing and setting aside the order dated 3.5.1994 cancelling the appointment order of the petitioner at Annexure 'B' to the petition.

2. Shri Saurabh Mehta, learned advocate appearing on behalf of the petitioner has submitted that identical petition being Special Civil Application No. 10237 of 1996, in which identical order of cancellation of appointment order was challenged, came to be heard by the learned Single Judge of this Court [Coram: Mr. P.B. Majmudar, J.] and this Court vide order dated 19th September 2005 has quashed and set aside the order of cancellation of appointment order on the ground that no opportunity of being heard was given to the petitioner. Learned counsel appearing on behalf of the respondents is not in a position to dispute the fact that the controversy in question which is raised in the present Special Civil Application is not squarely

covered. The learned counsel appearing on behalf of the respondents is unable to distinguish the facts of the present case with the facts of the Special Civil Application No. 10237 of 1996.

3. It is also not in dispute that before cancellation of the order of appointment no opportunity of being heard was given to the petitioner. Under the circumstances and for the reasons stated in the Judgment and Order dated 19th September 2005 passed in Special Civil Application No. 10237 of 1996 the impugned order dated 3rd May 1994 is required to be quashed and set aside on the limited ground that no opportunity of being heard was given to the petitioner.

4. Under the circumstances, the impugned order dated 3rd May 1994 is quashed and set aside only on the limited ground that no opportunity of hearing was given to the petitioner and the respondent

Corporation is directed to pass a fresh order after hearing the petitioner.

5. Shri Mehta, learned advocate for the petitioner has fairly submitted that the petitioner will not claim any backwages or any monetary benefits for the intervening period. He has submitted that the petitioner will report for duty by remaining present in Head Office on or before 12th April 2007.

5.1. After the petitioner resumes in his duties, the department may pass a fresh and appropriate order in accordance with law after hearing the petitioner. Accordingly, the petition is allowed to the aforesaid extent. However, it is made clear that the petitioner shall resume in his duties on or before 12th April 2007 and will not claim any backwages, increment or any other monetary benefit for the intervening period as submitted by the learned counsel appearing for the petitioner. Rule is made absolute to the above extent with no order as to costs. Direct service is permitted.

[M.R. Shah, J.]

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